City of Des Moines/Municipal Employees Assn. 2004-2005 CEO 213 SECTOR 3

IN THE MATTER OF THE ARBITRATION

BETWEEN

CITY OF DES MOINES, IOWA,

Employer,

vs.

MUNICIPAL EMPLOYEES ASSOCIATION, CEO #213/3,

Employee Organization.

ARBITRATION AWARD

Wilford H. Stone, Arbitrator

Issued: March 7, 2005

A. APPEARANCES

For City of Des Moines, Iowa:

Frank Harty, Attorney
Tom Turner, Human Resources Director
Allen McKinley, Research and Budget Officer
David Lind, David P. Lind & Associates, LLC
Carol Moser, Assistant City Attorney

For Municipal Employees Association:

Charles Gribble, Attorney
Tore Nelson, President MEA
Rita Fromm, MEA
Wayne Newkirk, Economist
Judy Gracey, Secretary MEA
Terry Loy, Vice President

B. INTRODUCTION/STATEMENT OF JURISDICTION

This matter proceeded to an arbitration hearing pursuant to the statutory procedures established in Iowa Code Chapter 20 (2005). The undersigned was selected to serve as an arbitrator from a list furnished to the parties by the Public Employment Relations Board.

Pursuant to the parties' agreement, the arbitration hearing was held beginning at 1:00 p.m., February 25, 2005, in a conference room at the Police Academy in Des Moines, Iowa. The hearing was electronically recorded. The

issues at impasse are wages, insurance, and one language issue that is the subject of a negotiability dispute currently pending before PERB. However, the parties agreed the arbitrator was to rule on all issues presented to him. No subpoenas were requested and no stenographic recordings were requested.

In the course of the hearing, both parties submitted their evidence and were given full opportunity to introduce evidence, facts and present argument, rebuttal and surrebuttal in support of their respective positions. The majority of the evidence was submitted through the parties' representatives, Frank Harty and Charles Gribble. Several witnesses testified: Wayne Newkirk, Tore Nelson, David Lind, Allen McKinley, and Tom Turner.

The matter is now fully submitted. Representatives for both parties (Frank Harty and Charles Gribble) vigorously argued their positions, and the oral presentations and arguments were of assistance to the arbitrator. The parties chose not to submit post-hearing briefs, and the February 25, 2005, hearing was closed around 5:15 p.m. It was agreed that the record would remain open until the City could send by electronic mail a copy of its brief in response to the Union's petition for expedited resolution of negotiability dispute. Upon returning to his office February 25, 2005, the arbitrator received the City's brief, and the record was closed. The award set forth below is based upon the arbitrator's weighing of all of the facts and arguments submitted.

C. EXHIBITS

The parties both submitted black notebooks containing their exhibits. Certain exhibits were admitted subject to objection by both parties.

D. ARBITRATION CRITERIA

Iowa Code Chapter 20 contains specific criteria that are to be used by an arbitrator in assessing the reasonableness of the parties' arbitration proposals. The criteria set forth in Iowa Code § 20.22(9) (2005) states:

> The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> 1. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
>
> 2. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> 3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
>
> 4. The power of the public employer to levy taxes and appropriate funds for the conduct of its business.

The Iowa Code requires that the arbitrator must choose between Osceola County's final offer, or AFSCME Council 61's final offer on each impasse item. Iowa Code § 20.22(3) (2005). The Iowa Code further provides that the arbitrator must select, without alteration, the most reasonable of the positions on each of the items at impasse and consider the statutory criteria in arriving at the decision as to which is the most reasonable. See Iowa Code § 20.22(11) (2005).

E. ITEMS AT IMPASSE/FINAL OFFERS

1. Article IX – Settlement of Disputes.

City and Fact-Finder. Current contract – no change.

Union. The Union proposes to strike the first sentence and first word in the second sentence as follows: "The arbitrator shall not have the power to decide a

grievance, which is a matter suitable for submission to the Civil Service Commission. Also,. . ."

2. **Article XXV – Insurance.**

City. The City proposes:

(a) Amend the first unnumbered paragraph to read: "The following insurance coverage will be made available to permanent full-time employees subject to terms and conditions of the respective group contract or plan document of the insurer."

(b) Section B. "Health and Medical" is amended to read: "The City of Des Moines will make available a health insurance plan described in Health Plan Exhibit 1 to employees and their dependents. There is no contribution for single coverage. Employees selecting family coverage will contribute monthly an amount equal to five percent (5%) of the difference between the family and single premium. This contribution will be made on a pre-tax basis."

(c) Section C. "Dental" is amended to read: "The City will make available dental insurance as noted in Insurance Exhibit 2. There is no contribution required for single coverage. Employees selecting family coverage will contribute monthly an amount equal to five percent (5%) of the difference between the family and single premium. This contribution will be made on a pre-tax basis."

Union and Fact-Finder. Current contract – no change.

3. **Article XXVII – Appendix B - Wages.**

City. The City proposes a 1.5% wage increase effective June 20, 2005.

Union and Fact-Finder. A 3% wage increase effective June 20, 2005.

F. BACKGROUND

The City of Des Moines, Iowa, is located in the middle of the state, has a population of around 200,000, occupies 78 square miles, and according to one neutral, "is the political, economic, and cultural capital of the State of Iowa." Hill, page 1 of 14. The Municipal Employees Association (MEA) currently represents around 385 employees in the bargaining unit, and is referred to by the parties as the "white collar" unit. Among other classifications, these employees consist of accountants, computer operators, inspectors, clerks, typists, analysts, and technicians. See Appendix A to collective bargaining agreement. The average salary of this group is $40,000 (MEA Exhibit 6), and 218 employees elect family insurance coverage. Newkirk Exhibit 42. The City has a number of collective bargaining agreements with other unions, including AFSCME (50 employees), police (270 employees), fire (286 employees), CIPEC (the so-called "blue collar" unit, 600 employees), and the two library units represented by the IAMAW (total of 60 employees). See Behrens, page 3.

The current collective bargaining agreement expires June 30, 2005. The parties were unable to reach an agreement on several issues, and fact-finder Curtis K. Behrens issued a report January 31, 2005. The only items for the arbitrator are wages, health insurance and grievance arbitration language. All other articles of the contract will remain unchanged, or have been resolved by the parties themselves.

G. POSITIONS OF THE PARTIES AND FINDINGS OF FACT[1]

1. Article IX – Settlement of Disputes.

A. City and Fact-finder Position. The City and the fact-finder both support no change to this language. The fact-finder stated there was "insufficient evidence that there has been a significant problem caused due to the current contract language and the parties have agreed to this language, unchanged, for many years." Behrens report, page 8. At the arbitration hearing, the City's Human Resource Director, Tom Turner, testified that the parties have had this same language in the contract unchanged since 1976, and that similar language is in at least three other collective bargaining agreements. Mr. Turner further testified that the language, which states that the arbitrator shall not have the power to decide a grievance which is a matter suitable for submission to the Civil Service Commission, is an effort to avoid giving an employee "two bites at the apple." The City notes that the recent issue that prompted the Union's proposed change to the language did not prevent the employee from either filing a grievance, nor bringing the matter before the Civil Service Commission. Rather, the clause merely states that the arbitrator shall not have the power to decide a grievance which is a matter suitable for submission to the Civil Service Commission.

B. Union Position. The Union is proposing to change the current contract language by deleting the first sentence from the following paragraph (along with the first word of the second sentence for grammatical correctness) from Article

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[1] The background and all exhibits submitted by the parties are incorporated into all findings of facts and conclusions of law. All references to "insurance" in this award collectively refer to the Health and Medical and Dental plans at issue. The parties have similarly collectively referred to the entire package as merely "insurance." See Union Opening Statement at 4 and City brief at 8.

IX, Settlement Disputes, Section B. Limitations: "The arbitrator shall not have the power to decide a grievance, which is a mater [sic] suitable for submission to the Civil Service Commission. Also, the arbitrator shall be without power to add to, subtract from, or modify the terms of this agreement, not to make any decision in conflict of the laws of the State of Iowa or the ordinance of the City of Des Moines, Iowa." The Union presented testimony regarding its perceived problem with the language.

C. Findings of Fact. The collective bargaining history shows that this language has been in the collective bargaining agreement since 1976, and has not been altered in nearly 30 years of collective bargaining. The recent issue that apparently arose with an MEA member was not fully explained to the arbitrator, and a careful review of both the Union's and City's briefs to PERB on the negotiability issue shed no further light on the matter. Rather, both briefs merely argued the issue of whether the language was a mandatory or permissive subject of bargaining. The "internal comparability" supports the City and fact-finder's positions and is another "relevant" factor, as the CIPEC, firefighter, and police contracts all contain identical language. See police, fire, and CIPEC contracts (settlement of disputes/grievance procedure articles). The AFSCME contract, for all extents and purposes, has the same effect: "In the event that the grievance is a matter suitable for submission to the Des Moines Civil Service Commission, the employee shall select one forum (Civil Service Commission or arbitration) to resolve his or her appeal or grievance." Neither party submitted any external comparability information on this issue. The fact-finder also believes it is in the public interest and welfare that a longstanding collectively bargained language issue such as this one

not be changed absent compelling reasons to do so. It is also in the public interest and welfare that a person who believes he or she has a grievance has access to some form of remedy for that grievance (whether through the grievance procedure or the Civil Service Commission), and that the parties to such a dispute do not spend unnecessary funds litigating a dispute in multiple forums.

Therefore, based on the bargaining history of the parties, a comparison to other collective bargaining agreements within the City of Des Moines, and the interest and welfare of the public, the arbitrator finds that the City's and fact-finder's proposal on this language issue are the most reasonable.

2. Article XXV– Insurance.

A. City Position. The City proposes to have the MEA members transferred to the SPM Insurance Plan. The City's main argument is "internal comparability." See City brief at 6. The City notes that the firefighter's union has accepted the SPM Plan, and it is the same insurance offered to the City's unrepresented employees, AFSCME and both the clerical and professional unions of the library. The City notes that although it is appropriate to compare wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, the City argues that an arbitrator must give "consideration to factors peculiar to the area and the classifications involved," citing Iowa Code § 20.22(9)(B). The City argues that the first and most reasonable source of comparability data which would contain factors peculiar to the area and the classifications involved is a public employer involved in the particular impasse litigation. Id. at page 7. Here, the City argues that the most closely comparable group within the City of Des Moines is the AFSCME unit, which

represents the City's housing department. They represent inspectors, clerical employees and general office staff. Id. at page 7. The City argues that AFSCME agreed to a 1.5% wage increase in order to avoid participating in the cost of insurance premiums.

The City argues that its insurance proposal is the most reasonable. It notes that it bargains with six separate unions for seven bargaining units, that it is in the fourth year of a five year agreement with CIPEC, and that the police and MEA contracts are open.

The City also offered the testimony of David Lind, whose company performs an annual survey of Iowa employers regarding insurance matters. See City brief at 8-9. According to Mr. Lind, his survey shows that Iowa employees are paying a portion of the cost of insurance premiums. The City argues that consumer based health insurance is the wave of the future. It notes that Wellmark's CEO has said that it is essential that insureds have "skin in the game." The City argues that "this will help contain health care costs and, thereby, control health insurance increases." The City argues that "it is time that the Union is dragged kicking and screaming into the 21st century."

The City also presented a number of exhibits, including an internal insurance comparison (Exhibit 3), copies of the collective bargaining agreements with other city unions (Exhibits 4 through 6), and the testimony of expert witness, David Lind, and his power point slide (Exhibits 7 and 8). The City also attached a copy of BNA's CPI Summary, and several articles regarding the economic conditions and insurance costs. See Exhibits 12, 14 and 15. The City also attached the fact-finder's report, a resolution of right of finding the firefighter's settlement, and

correspondence from the firefighter's president. The City notes that it is not making a strict "inability to pay" argument, but that its tenuous financial condition is an important point of consideration in this case. See City brief at 4.

B. Union and Fact-finder Position. Both the Union and fact-finder recommend no change to the existing insurance language. Fact-finder Behrens stated that he was reluctant to change language issues in the contract "without strong documentation" that the existing contract language is causing unreasonable hardship to one of the parties, and that the other party is unreasonably refusing to agree to any changes which would address said hardship. See Behrens' report at 6. The fact-finder found a "long history of prior bargaining by these parties that has resulted in the current contract's language." Id. The fact-finder noted that some of the language was changed to address some of the City's concerns. Id. The fact-finder concluded that he cannot know what prior bargains might be "destroyed or disrupted by unnecessarily recommending changes to previously negotiated contract language." Id. at page 6.

In proposing no change to the current insurance language, the Union notes that both parties presented the same exhibits and arguments to the fact-finder, and that his report and recommendation is entitled to "great weight." The Union noted that the fact-finder has more discretion than an arbitrator, and that if the fact-finder felt that some changes were appropriate regarding health insurance, he could have certainly recommended them. The Union also disputes the City's characterization of its insurance plan as the Lexus or Cadillac of plans. The Union notes that its membership are on a plan known as the "MEA plan." The Union notes that the references regarding Lexus and Cadillac refer to the "traditional plan," not this one.

The Union concludes that if the arbitrator were to change insurance, that there should be better proof in the record regarding the need for such a change. The Union notes that such changes are usually accompanied by an above average pay increase, and some other significant change in benefits to the membership, none of which are present here.

As noted in the wage discussion, the Union submitted a number of exhibits comparing the various final offers of the parties. The Union submitted the testimony of Wayne Newkirk and Tore Nelson regarding the current and proposed changes to the insurance plan, costing issues, potential expenses to the membership, and the internal comparability to other units. See Newkirk arbitration Exhibits 11-12, 38-42 and MEA's Exhibits 1-15.

The Union also notes that both fact-finder Behrens and Hill heard essentially the same testimony from the City regarding its financial condition and the need to change insurance policies. The Union notes that both arbitrators recommended no change to the current insurance. The Union concludes the fact-finding reports are entitled to "great weight."

C. Findings of Fact. Insurance is one of the most difficult issues that public employers and unions are dealing with in the State of Iowa. Health insurance is an item that many cannot afford and yet, many cannot afford to be without. Premium increases alone have averaged in double digits for the last several years and there is no sign of relief. Both employers and unions must attempt creative ways to make existing plans more affordable. Given the current health care climate, doing nothing is arguably not an option. See, e.g., City Exhibit 13, page 13.

The arbitrator has carefully reviewed the parties' exhibits and listened to the hearing's transcript. The arbitrator concludes, based on the "internal"/external comparability information, and the public interest and welfare, that it is appropriate to require MEA employees to share more in the cost of health insurance with the employer. To paraphrase another neutral, the City's insurance proposal "is modest, fundamental, and almost uniform in other jurisdictions." Hill at 13. If employees are required to participate in the cost of insurance, they will have greater incentive to control costs, and also arguably have more incentive to be more careful than when insurance pays all or most of the cost. Also, they will become better informed consumers of health care. Such cost sharing is also good for labor-management relations, as it ensures both parties will seriously bargain health insurance issues, and work jointly to cut costs and explore all the various options (e.g., different carriers, managed care, examining health savings accounts, rewarding healthy employees, working with third-party administrators, exploring different consumer-driven health plan options, cafeteria plans, using pre-tax dollars, etc.).

Moreover, the arbitrator believes the public also benefits from the increased communication between Employer and Union as they explore ways to control insurance costs for everyone. Finally, the arbitrator similarly believes it is in the public interest and welfare for MEA employees to have insurance coverage comparable to other similarly situated public employees. These employees provide valuable services to city residents, and are more productive if they have good health insurance.

In making this award, the arbitrator acknowledges he is not following fact-finder Behrens' recommendation, nor fact-finder Hill's rationale in the police fact-

finding report. Both recommended the parties make no change to each respective insurance plan. See Union Exhibits containing the Behrens and Hill reports.

As the arbitrator understands fact-finder Behrens' rationale, he believed that "language changes to the parties' current contract should not be recommended by a neutral without strong documentation that the existing contract language is causing unreasonable hardship to one of the parties, and that the other party is unreasonably refusing to agree to any changes which would address said hardship." Behrens' report at 6. Fact-finder Behrens further states: "There is a long history of prior bargaining by these parties that has resulted in the current contract's language." Id.

First, the parties admit, and fact-finder Behrens stated elsewhere in his report, that the current insurance language is the result of "mutually agreed changes that took effect January 1, 2004." See Behrens' report at 6, and Union Introduction at 3 (stating that the most recent MEA change in insurance was negotiated effective July 1, 2003). See also MEA Exhibit, page 10-11. Whether the change in insurance occurred either one or two years ago, however, does not support a finding of a "long history of prior bargaining" resulting in the current contract's language. The arbitrator has carefully reviewed the record for any further evidence of bargaining history.[2] While there are exhibits containing the bargaining history back to 2000 on wages (see Newkirk Exhibit 18-19), there are no comparable documents showing bargaining history for a similar time period on insurance premiums and employee contributions. Further, the arbitrator carefully

[2] The arbitrator carefully read the Behrens and Hill recommendations on this issue. Mr. Hill characterizes the City's police insurance proposal as a change "for the first time" in decades to some type of employee contribution. See Hill at 2 and 3. This alone may distinguish the police and the MEA bargaining histories, as this arbitrator was unable to find such bargaining history on this record.

listened (and relistened) to the Union President's testimony. He candidly admitted that in his research and experience "different plans were available" over the years and that "historically" some of those plans "may have allowed for contributions" but there have also been plans "free of charge."

The "internal history" of bargaining within the City's various units shows a recent movement towards a single insurance plan for all employees, both union and non-union (the SPM insurance plan)(see MEA exhibit, page 18). The arbitrator is not implying that the City and its Unions have strict "pattern" bargaining, although the fact-finder alluded to it in his discussion of wages (Behrens at 5), and the City vigorously argues that it is in the public employer's interest "to treat its various groups of employees in a similar fashion." Brief at 10. The arbitrator acknowledges that perfect equality of contract language and compensation is impossible to achieve given the different conditions facing City employees and the City, and the different scope of work they perform. And, despite all the testimony about whether MEA members are more "comparable" to AFSCME or CIPEC, the arbitrator believes under PERB's "community of interest" requirement for bargaining units, no two internal unions at the same employer could ever be considered truly "comparable." See also Iowa Code § 20.22(9)(2)(2005)(arbitrator is to compare wages, hours, and conditions of employment with those of other public employees "doing comparable work . . .") Rather, the arbitrator simply believes, under Iowa Code Chapter 20, that it is a "relevant" factor in examining insurance plan proposals, that four of the seven City unions have already switched to the SPM insurance plan, in addition to the City's salaried non-union employees. See also

Hill at 6 (arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits" (citation omitted).

The arbitrator further notes that while the fact-finder's report discussed bargaining history (Iowa Code § 20.22(9)(1)), it did not address the additional statutory factors of comparability (Iowa Code § 20.22(9)(2)), and the interests and welfare of the public (Iowa Code § 20.22(9)(3)). Id. Compare Hill at 11-13 (examining external comparability and bargaining history). A careful review of the Union's black notebook reveals numerous comparability exhibits on insurance (e.g., Newkirk analysis, 11-18, "Comparative Data Base" and "Comparative Data" and MEA exhibits 1, 4, 5, 6, 7, 9 and 13, "Comparison.") As the Iowa Code requires, and the Union admits, comparability data is a significant factor to be applied by an arbitrator in determining the most reasonable position on insurance.

The Union argues external comparison to other similarly situated public employees is "critical." See also Iowa Code § 20.22(9)(2005). While comparability on health insurance plans is often difficult because each plan differs so much, the trend in Iowa public sector labor relations is a sharing of costs for insurance. Cf. Hill at 13. In this respect, the arbitrator notes that fact-finder Hill in his report examining the police unit expressly found at least four other external comparable employers – Davenport, Waterloo, Cedar Rapids, and Sioux City – require employee contributions of some sort, whether premium or deductibles or co-pays. See Hill at 13. "[T]he [City] has demonstrated that when compared to other cities, its proposal is more reasonable than the Union's status quo position. . ." Hill at 12.

Here, the arbitrator notes that of the external comparable cities proposed by the Union, the cities of Council Bluffs, Iowa City, Waterloo, and Cedar Rapids all

have some type of employer and employee co-payment and sharing of expenses. See Newkirk Exhibit 11-12. In his testimony, Professor Newkirk stated the City of Des Moines was most comparable to the City of Iowa City, which is also experiencing a "boon in construction." In reviewing Professor Newkirk's Exhibits, the arbitrator notes the City of Iowa City employees on the family plan contribute $40 per month, and will receive either a 2.75% or 2.9% increase July 1, 2005. See Newkirk Exhibit, page 11 (2.75%) and 37 (2.9%). Under this external comparison, MEA employees fare better than their Iowa City counterparts in both wages – 2.75%/2.9% versus 3% -- and family health insurance premiums -- $40 versus $28.52. Compare Newkirk Exhibits 11 and 12.

The arbitrator has already noted that three of the City's internal unions have also moved to the SPM insurance plan, and the firefighter's union further recently agreed to move to the SPM plan. See Employer Exhibit 17 and Union Exhibit, page 18. The Union argues that the firefighter's union received a higher wage increase (3.25%), a reduction in the number of days they work, and a three year contract. The arbitrator again emphasizes that he is not finding the MEA "white collar" employees are truly "comparable" to other internal city unions especially firefighters. The fact that other internal city unions are switching to the SPM insurance, however, is a "relevant" factor and proof of the bargaining history within the City. Such consistency in insurance plans is arguably concrete proof of the City's good faith – it is requesting all employees (union and nonunion) to move to the same insurance plan – and it also encourages trust among the various unions that one group is not going to get a better deal by holding out or forcing the issue to arbitration. In any event, the Union admits that both the police and fire unions are

different than all the other city unions as they have a history of receiving higher wage increases. The Union's own exhibit supports this testimony, as it shows the MEA employees have historically received 3% increases per year since 2000, while the police and fire are higher, and sometimes even double the MEA increases. See Newkirk Exhibit, page 18. See also City Exhibit 2.

The Union also argues that a "higher" wage increase or similar benefit should be required if the City wants it to change plans. However, the record indicates the City and MEA did not negotiate anything "extra" during the 2003-2005 contract (the Union changed plans and received 3%), and the firefighters in 2005 received 3.25% the first year, which is arguably substantially lower than previous years of around 6%-6.5%. See MEA Exhibit 10 and City Exhibit 2. Moreover, AFSCME in 2005 apparently chose to accept a 1.5% increase instead of participating in the cost of premiums. Fact-finder Hill made the same observation, noting that other unions in moving to the plan received normal wage increases, but that AFSCME, "whose increases have ranged in the 3% area, has a 1.5% increase coming in July of 2005 because they did not agree to a contribution towards health care." Hill at 13. Contrary to the Union's claim, the arbitrator is not convinced that additional consideration is needed for a move to the new plan, in light of the bargaining history and a comparison to other public employees doing similar work, and the internal comparison. Finally, as noted, the arbitrator finds it is in the public interest and welfare to require employees to share more in the cost of health insurance with the employer and to also receive adequate insurance consistent with

comparable employers.[3]

Therefore, based on the collective bargaining history of the parties, a comparison to other public employees doing comparable work, the interest and welfare of the public, and the ability of the City of Des Moines to fund such an insurance policy, the arbitrator believes that the City's proposal on insurance is the most reasonable.

3. **Article XXVII – Wages.**

A. City Position. According to the testimony, the City submitted essentially the same exhibits that were presented to the fact-finder. The City's brief contained a number of arguments, including that Des Moines has been in a "precarious" financial position for years (page 4), that the arbitrator should give paramount weight to internal comparisons to other City employees (page 6), that the arbitrator should give considerable weight in reviewing comparability to the AFSCME unit (page 7), and that an analysis of internal comparability dictates awarding the City's 1.5% wage offer (page 9). While wages and insurance are separate issues for impasse, resolution in Iowa, the City candidly admits that if the arbitrator awarded its insurance proposal, the City can live with a 3% wage increase. If not, the City believes that a 1.5% increase is appropriate. Finally, the City argues that the arbitrator should discount Professor Wayne Newkirk's testimony (page 12).

[3] The arbitrator places special significance on the bargaining history of this Employer, the trend with other internal unions, the external comparability, and the public interest and welfare. To the extent Mr. Lind's testimony and study confirms rising health care costs or the growing trend increasingly to share insurance costs with employees, it may constitute a "relevant factor." However, as noted by the Union, the study contains no specific reference to comparison between public and private sector employees, nor any specific evidence of any public employees doing comparable work. Accordingly, the arbitrator gives no weight to this evidence and for external comparability relies primarily on Union/Newkirk analysis page 11-12.

The City submitted a number of exhibits in addition to the testimony from Tom Turner, Allen McKinley, and David Lind. The City submitted exhibits containing the current contract between the parties (Exhibit 1); the internal wage change summary (Exhibit 2); the collective bargaining agreements between the City and AFSCME and the machinists (Exhibits 4, 5 and 6); the CPI summary from BNA (Exhibit 12); an article on cities facing tough times (Exhibit 14); a copy of the fact-finder's report (Exhibit 16); a resolution regarding the firefighter settlement (Exhibit 17); correspondence from the firefighter's president (Exhibit 18); and a description of the settlement terms with the firefighters union (Exhibit 19).

As noted, the City believes "internal" comparability is more important than external comparability. Nonetheless, Mr. Turner spent considerable time reviewing Wayne Newkirk's exhibit comparing the Municipal Employees Association to other similarly situated employees in Cedar Rapids, Waterloo, Iowa City, Council Bluffs and Dubuque. Mr. Turner concluded that Mr. Newkirk's exhibits did not contain comparable job classifications, and were really a mix of AFSCME, CIPEC, and MEA classifications at the other external cities. See generally MEA arbitration Exhibits (pages 21-31).

Finally, as noted above, the City's attorney in closing argument stated that if the arbitrator were to award the City's insurance proposal, it would concede that a 3% increase was appropriate.

B. Union and Fact-finder Position. The Union and fact-finder both recommend a 3% wage increase. The fact-finder relied heavily on City Exhibit 2, entitled Contract Settlements Between the City of Des Moines and the Bargaining Units 1997-2005 as "convincing" evidence that a 3% wage increase

was the most appropriate recommendation from him. The fact-finder excluded the fire and police units, and found that the exhibit reports that for the nine years in question, and the five units involved, a 3% annual wage increase occurred in 36 out of the 44 possible annual increases. See Behrens' report, at 5. The fact-finder noted that the fire and police units had 3% increases from 1997-1999, and that the City committed "to make the protective services the highest paid in the state." Id. The fact-finder found a "strong internal history" of past bargaining within the City's units. The fact-finder found that the association's external comparability arguments at the fact-finding were unable to overcome this strong internal history. Id.

At the arbitration hearing, the Union proposed a 3% increase. In support of the offer, the Union presented several relevant background facts. The Union notes that the number of employees in the bargaining unit has dropped from 416 to 385, and that the wage cost has similarly declined from around $14.6 million to $14 million, for a savings to the City of almost $550,000 in the first year of the prior contract. See Union opening statement, at page 1. The Union argues that the cost of a 1% increase in the bargaining unit is $140,622.39. The Union presented testimony of Wayne Newkirk and Tore Nelson. Both witnesses testified to internal/external comparability, and the history of bargaining. The Union argues that the consumer price index is between 2.5% and 2.7%, and that its offer is similar. See Newkirk at 35. According to the Union, the average settlement for external comparable units is 3.13%. See Union Exhibit 37. The Union also notes that all other internal unions at the City of Des Moines have settled at around 3%. See Newkirk Exhibit at 16. (The City disputes this, and

argues that AFSCME received a 1.5% last year). The Union also argues that the collective bargaining history supports a 3% increase for this unit, and notes the bargaining history since 1997. See Newkirk at 18. Regarding external comparability, the Union argues that its unit is comparable to similarly situated employees in Cedar Rapids, Waterloo, Iowa City, Council Bluffs, Dubuque and Davenport. See Union Exhibit 37. It appears that Cedar Rapids and Dubuque have not settled yet. Of the four reported settlements (Waterloo, Iowa City, Council Bluffs and Davenport), the average settlement for fiscal year 2006 is 2.975%. See Union Exhibit 37.

The Union submitted a number of other exhibits in support of its wage proposal, including an extensive analysis by Professor Wayne Newkirk, where he analyzed comparative data, wage proposals, and wage settlements and insurance, both internally and externally. See Newkirk Table of Contents in Exhibits that follow it. Professor Newkirk also analyzed the difference in proposals between a 1.5% and 3% wage proposal (page 46), and the different impacts of the various wage and insurance proposals (page 42). Professor Newkirk testified that the Union's proposal was comparable both internally and externally, with the Consumer Price Index, and was well within the City's ability to pay.

The Union also submitted its own exhibits comparing its employees with various other City employees regarding wages and insurance and the effects of various proposals on its membership. See MEA Exhibits 1-20. Professor Newkirk and Mr. Nelson were subjected to extensive cross-examination on the various exhibits. The Union also presented copies of the current AFSCME,

police, fire, CIPEC, and library collective bargaining agreements, and also submitted the fact-finding reports of Curtis Behrens in this case, and the fact-finding report of Marvin Hill issued in the police impasse. According to the parties, Arbitrator Lon Moeller is currently taking under advisement the various positions of the parties and fact-finder and the police impasse.

The Union argues that its wage increase is comparable both internally and externally, and that it has modified its position to the arbitrator after reviewing fact-finder Behrens' report. The Union notes that the fact-finder heard essentially the same arguments and received the same exhibits that are currently before the arbitrator, and in his discretion, he recommended a 3% across the board increase. The Union notes that the City is not claiming that the fact-finder made any error in his reasoning or calculations, and that the fact-finder's report is entitled to "great weight."

C. Findings of Fact. The City stated at the hearing that if the arbitrator were to award its insurance proposal, it would concede a wage increase of 3% was appropriate. Since the City, Union and fact-finder all agree on the same 3% increase, the arbitrator will similarly award it. The arbitrator notes that the 3% across the board increase is higher than the Consumer Price Index numbers cited by both parties, is consistent with the bargaining history of the parties, and is comparable to other wage increases in the comparability group. See Newkirk Exhibits 16, 18, and 37.[4] The arbitrator also believes it is in the public interest and

[4] See also Newkirk Exhibits 42 and 46. Using Professor Newkirk's analysis, a 3% increase costs $421,867. Exhibit 46. $421,867 minus family premium "insurance expense" $74,613.55 equals $347,253.45, or an "actual benefit" to employees with family coverage of 2.46% ($345,386.45 divided by $14,062.239) Exhibit 42. Of course, those employees with single coverage (75/385, 19.5%) will not incur this family premium "insurance expense." Id. and Union Exhibit 1.

welfare for these employees to receive a wage increase comparable to other similarly situated employers in the State of Iowa. Finally, the City of Des Moines concedes it is not making an inability to pay argument.

Therefore, based on the agreement of the parties and the fact-finder, the collective bargaining history of the parties, a comparison to other public employees doing comparable work, the interest and welfare of the public, and the ability of the City of Des Moines to fund such an increase, the arbitrator believes that the Union and fact-finder's proposal on insurance is the most reasonable.

H. CONCLUSIONS OF LAW/AWARD

In accordance with the statutory criteria imposed upon the arbitrator, the arbitrator determines as follows:

1. **Article IX – Settlement of Disputes.** The final offer of the City and fact-finder is selected as the most reasonable.

2. **Article XXV– Insurance.** The final offer of the City is selected as the most reasonable.

3. **Article XXVII – Wages.** The final offer of the Union and fact-finder is selected as the most reasonable.

Dated this 7th day of March, 2005.

Wilford H. Stone, Arbitrator
Cedar Rapids, Iowa

CERTIFICATE OF SERVICE

I certify that on the 7th day of March, 2005, I served a copy of the foregoing Arbitration Award upon the following persons by mailing pursuant to the Iowa Code and the Iowa Rules of Civil Procedure:

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